

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FAMILY SERVICE LIFE INSURANCE
COMPANY,

Plaintiff,

CASE NO. 8:10-CV-00142

JUDGMENT OF DEFAULT

v.

DIANE STELLY and DOUGLAS D. HERR,

Defendants.

THIS MATTER came before the Court on this 11th day of January, 2011, upon Plaintiff Family Service Life Insurance Company's ("Family Service") Motion for Court's Entry of Default Judgment. The Court, being fully advised, concludes as follows:

1. On June 19, 1989, Darlene L. Johnston, deceased (the "Decedent"), executed an application for issuance of a life insurance policy and designated Diane Stelly ("Ms. Stelly") as the primary beneficiary eligible to receive death benefits under the Policy in the event of the Decedent's death.

2. On June 23, 1989, Family Service issued a life insurance policy, # 0539855 (the "Policy"), which was issued on the life the Decedent. The Decedent passed away on June 10, 2008.

3. As a consequence of Decedent's death, Family Service is obligated to pay the lawful beneficiary the death benefit arising under and pursuant to the Policy, which is \$8,021.05.

4. On August 12, 2008, Family Service received a claim form from Douglas D. Herr ("Mr. Herr") wherein he claimed an interest in the proceeds of the Policy. On

April 27, 2009, Family Service received a claim form from Ms. Stelly wherein she claimed an interest in the proceeds of the Policy. All other parties who claimed any interest in the proceeds of the Policy have disclaimed all such interests.

5. Because Ms. Stelly was listed as the beneficiary on the Policy, Family Service sent letters to Mr. Herr on August 24, 2009 and September 28, 2009 requesting that he release and disclaim any and all interest in the proceeds of the Policy. Family Service has not received a release from Mr. Herr.

6. Family Service has no interest in the Policy. This is the only policy issued by Family Service concerning the Decedent.

7. Due to potential competing demands regarding disposition of the Policy benefit, Family Service brought the instant action in Interpleader, and has properly served all parties potentially having an interest in the Policy proceeds. Family Service is ready, willing and able to deposit with the Court the sum of \$8,021.05, representing all remaining proceeds payable under the terms and conditions of the Policy.

8. All Defendants have failed to plead or otherwise defend as provided by Federal Rule of Civil Procedure 55(a).

IT IS ORDERED, ADJUDGED, AND DECREED THAT judgment is hereby entered for Plaintiff, Family Service, as follows:

IT IS HEREBY DECLARED that:

a. Family Service's request for Interpleader is granted and Family Service is authorized to deposit the insurance proceeds with the Court;

b. Upon Family Service's payment of the death benefit to the Clerk of the United States District Court, Family Service shall be wholly and completely discharged and absolved from any further liability, of any kind, to each of the defendants and any

other claimant for the death benefit arising under the policy of insurance bearing policy number 0539855 on account of the death of the Decedent;

c. Family Service, its agents, employees, representatives, predecessors, successors, and assigns are released and discharged from and against any and all liability, suits, debts, judgments, dues, sums and/or causes of action, whether at law or in equity, to any person, entity, claimant and/or party to this action, for any and all benefits arising under and pursuant to a policy of life insurance bearing policy number 0539855 on the account of the death of the Decedent; and

d. Defendants, Diane Stelly and Douglas D. Herr, and their successors and assigns, are enjoined from instituting any action, prosecution, or proceeding, in any state, federal or other court of competent jurisdiction against Family Service seeking benefits or asserting damage claims arising under the policy of insurance bearing policy number 0539855 as a consequence of the death of the Decedent.

Dated this 11th day of January, 2011

BY THE COURT:

s/ Joseph F. Bataillon
U.S. DISTRICT COURT JUDGE

Prepared and submitted by:

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